

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 07-IWDUI-086
OC: 04/29/07
Claimant: Appellant (4)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AURA E DIAZ
215 LEONARD STREET
SIOUX CITY IA 51103-4717

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
QUALITY CONTROL
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

ROBERT TIEFENTHALER
ATTORNEY AT LAW
518 EIGHTH STREET STE D
SIOUX CITY IA 51101

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

MICHELE ANDRE, IWD
DAN ANDERSON, IWD

(Administrative Law Judge)

June 29, 2007

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.2(1)e – Failure to report

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated May 29, 2007, reference 01, which held the claimant ineligible for benefits effective May 20, 2007, because he failed to report to a call-in notice for an interview.

The hearing was held pursuant to due notice on June 26, 2007, by telephone conference call. The claimant participated with the assistance of her daughter, Nelly Diaz, and Attorney, Robert Tiefenthaler. Randy Cramer, Quality Control Auditor, participated on behalf of Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective May 29, 2007. Quality Control randomly selected the claimant's claim for review, and it assigned Auditor Cramer to perform the investigation.

Auditor Cramer mailed a Notice to Report to the claimant at her address of record on May 17, 2007. The Notice advised the claimant to be available for a telephone interview at 10:00 am. on May 23, 2007 at a telephone number provided. Cramer called the telephone number for the claimant on the date and time scheduled for the interview, but there was no answer. After waiting several days beyond the interview, and receiving no response, Cramer caused the department to issue a disqualifying decision.

An interpreter called Cramer on May 31 stating the claimant did receive the department decision, but she did not receive any notice for the telephone interview. Since the claimant was present with the interpreter, Cramer re-scheduled the telephone interview for June 7. When the claimant satisfied the department review on June 7, Cramer removed the disqualification effective May 31.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able and available for work.

Iowa Code Section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.2 Procedures for workers desiring to file a claim for benefits for unemployment insurance provides:

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

- e. In order to maintain continuing eligibility for benefits during any continuous unemployment, an individual shall report as directed to do so by an authorized representative of the department.

The administrative law judge concludes that the claimant should not be disqualified for the week ending May 26, 2007, for failing to report as directed by the department for a telephone interview

pursuant to 871 IAC 24.2(1)e, and Iowa Code section 96.4-3. The claimant did not receive the notice to report for the telephone interview that is most probably due to a postal service delivery error, and when she learned of the Quality Control request after receiving the decision, she immediately went to her local workforce center to comply with the department review.

DECISION:

The decision of the representative dated May 29, 2007, reference 01, is MODIFIED in favor of the claimant. The claimant is NOT disqualified from receiving benefits for the week ending May 26, 2007, for failing to report for an in-person interview. The claimant is entitled to receive benefits for the week ending May 26, 2007, and thereafter, provided she is otherwise eligible.

rls